IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 12073 of 2004

Between:

1 E.Aand Kumar S/o Rajaiah
2. V.Subba Rao S/o Satyanaryana
3 S.Guravaiah S/o Sripadam
4. Narasaiah S/o Gopaiah
5. K.Venkanna S/o Satyam
6. M.Veera Babu S/o Appaiah
7. K.Bhaskar S/o Abbaiah
8 D.Mangya S/o Laloo
9 K.Venkateswarlu Nagabhushanam
10 M.Bitchya S/o Lasya
11 M.Srinivasa Rao S/o Ramaiah
12 G.Srinivasa Rao S/o Rajaiah
13 V.Srinu s/o Venkataiah
14 T.Ramulu
15 M.Srinu
16 S.Nageswara Rao

All are working at Upper Sileru Hydro Electric Scheme Visakhapatnam District.

..... PETITIONERS

AND

1 The APGENCO, rep. by its Chairman and Managing Director APGENCO, Vidyut Soudha , Hyderabad
2 The Execuitve Director (HR) APGENCO, Vidyut Southa , Hyderabad
3 The Chief Engineer Operation & Maintenance, Mothugudem, Khamman Disrict
4 The Superintending Engineer Civil (O&M) Circle APGENCO, Upper

Sileru, Visakhapatnam District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more particularly one in the nature of writ of Mandamus declaring the impugned action of the respondents in issuing G.O.D.No.614/2002, dt. 3/1/2003 prescribing 31/12/2002 as cut of date for conversion of Mazdoors as Junior Plant Attendants and further allowing only the candidates failed in the earlier Job oriented Test while depriving the petitioners vide Memo.No.GM(IR)/AS(SER)/P.O.M/M-2-768/03-7, dt. 11/05/2004 and further denying the petitioners the same benefit though they have completed more than 5 year of service as highly illegal, arbitrary and violative of Art. 14 of the Constitution of India

Counsel for the Petitioner:MR.G.V.SHIVAJI

Counsel for the Respondents: SMT.K.SESHARAJYAM

WRIT PETITION No. 12559 of 2004

Between:

1. **B.D.Kesava Rao S/o Koteswara Rao**
2. **V.V.Reddypanthulu S/o Sree Rama Murthy**
3. **K.Durga Prasad rao S/o Ramachander Rao**
4. **T.Appala Naidu S/o Baginaidu**
5. **I.Ambru S/o Hemla**
6. **J.Vasumdhara D/o Venugopala Rao**
7. **B.Venkateswara Rao S/o Nageswara Rao**
8. **B.Subba Rao S/o Mohan Rao**
9. **Md. Yakub S/o Issaq**
10. **K.V.D.V.Prasada Rao S/o Lakshman Rao**

All are Working as Mazdoors in Vijayawada Thermal Power Station , Ibrahimpatnam Vijayawada, Krishna District

....PETITIONERS.

AND

1 The APGENCO rep. by its Chairman and Managing Director APGENCO, Vidyut Soudha Hyderabad
2 The Executive Director (HR) APGENCO, Vidyut Soudha Hyderabad
3 The Executive Director, O &M VIPS, APGENCO Ibrahimpatnam , Krishna District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the impugned action of the respondents in issuing G.O.O.No.614/2002, dt.3/01/2003 Prescribing 31/12/2002 as cut of date for conversion of Mazdoors as Junior Plant Attendants and further allowing only the candidates failed in the earlier Job oriented Test while depriving the petitioners vide Memo.No.GM(IR)/AS(SER)/P.O.M/M-2-768/03-7, dt. 11/05/2004 and further denying the petitioners the same benefit though they have completed more than 5 years of service as on today as highly illegal, arbitrary and violative of Art. 14 of the Constitution of India

Counsel for the Petitioner:MR.G.V.SHIVAJI

Counsel for the Respondents: SMT.K.SESHARAJYAM (STANDING COUNSEL FOR AP GENCO)

The Court made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. Nos. 12073 and 12559 of 2004

COMMON ORDER:

Since the issue involved in both the writ petitions is with regard to cut-off date for conversion of Mazdoors in G.O.O.No.614/2002 dated 31.12.2002 and allowing the candidates who failed the Job Oriented Test, both these writ petitions are disposed of by a common order.

The petitioners challenge the action of the respondents in issuing G.O.O.614/2002 dated 31.12.2002 prescribing 31.12.2002 as cut-off date for conversion of Mazdoors as Junior Plant Attendants and further allowing only the candidates failed in the earlier Job

Oriented Test while depriving the petitioners vide Memo dated 11.5.2004 as illegal, arbitrary and violative of Article 14 of the Constitution of India.

The brief facts that are necessary for disposal of the present writ petition may be stated as follows:

The petitioners are working in the post of Mazdoors. While so, the Government issued G.O.Ms.No. 41 dated 23.9.1996 abolishing the contract labour practice in 33 categories of locations mentioned therein. As a necessary consequence, the State Electricity Board framed a scheme for absorption of those contract labour working in those locations vide B.P.Ms.No.37 dated 18.5.1997 which was replaced by B.P.Ms.No.272 dated 31.12.1997 imposing various conditions for absorbing the contract labour working in the abolished category. As the case of the petitioners was not considered, they filed a writ petition. The Board issued proceedings for absorption. The employees working in the category of Mazdoors demanded the APGENCO for conversion of the post of Mazdoor to that of Junior Plant Attendant. The respondent-Corporation issued G.O.O.614 dated 3.1.2003 for conversion of Mazdoors as Junior Plant Attendants. However, certain conditions have been prescribed in the said orders. While issuing the above orders of conversion, the APGENCO fixed cut of date as 31.12.2002 and those who have put in 5 years of service as on that date that counts for increment are alone made eligible for appearing in the Job Oriented Test. The petitioners. were deprived on the ground that they have not completed 5 years as on 31.12.2002. The respondents without giving any opportunity to the petitioners for Job Oriented Test, have been considering those who have failed in the Job Oriented Test conducted earlier. The restriction of 5 years of service as a Mazdoor as on 31.12.2002 itself suffers from patent illegality. The respondents are maintaining the seniority list and so they cannot draw the distinction between those absorbed prior to the petitioners and the petitioners. Hence the present writ petition.

The respondents filed counter affidavit stating that the petitioners in W.P. 12559 of 2004 were engaged as contract labours whereas the petitioners in 13065 of 1998 of 2004 were absorbed w.e.f. 19.11.1998. Considering the request of the employees union, a policy decision has been taken that before promoting a Mazdoor as Junior Plant Attendant, he must be able to read and write with below SSC and also and also Mazdoors who possess SSC and above qualification with 5 years of service. As the petitioners have not completed 5 years of service as on 31.12.2002, they are not eligible for conversion. Therefore, they are not eligible to participate in the Job Oriented Test. Hence the respondents pray to dismiss the writ petition.

Learned counsel for the petitioners vehemently contended that the cut-off date mentioned by the respondents is clearly arbitrary and unequal in view of the fact that in the same class of persons there may not be any cut-off date depriving the rights of some of the employees and therefore it is arbitrary and violative of Article 14 of the Constitution of India and therefore he prays that the cut-off date as mentioned in the impugned proceedings may be struck down.

On the other hand, the learned standing counsel appearing for the respondent-Corporation contended that in pursuance of the request made by the employees Union the impugned proceedings have been issued. Now the employees who are represented by the Union cannot turn round and say that it is unreasonable restriction and therefore he prays to dismiss the writ petition.

The factual matrix is not in dispute. Admittedly the petitioners in both the writ petitions have not completed 5 years of service as Mazdoors as on 31.12.2002. Therefore, they were not allowed to participate in the Job Oriented Test. It is also not in dispute that all the petitioners have been working as Mazdoors . As per the proceedings of the 1st respondent in G.O.O.614 dated 3.1.2003, the

1st respondent agreed to convert the Mazdoors as Junior Plant Attendants provided the Mazdoors who are able to read and write with below S.S.C. and the Mazdoors who possess above S.S.C. qualification and all these Mazdoors who have put in 5 years of service that count for increment as on 31.12.2002 A.N. shall be considered for conversion as JPAs. According to the learned counsel for the petitioners, this clause is contrary to Article 14 of the Constitution of India as the classification was not based on intelligible differentia though the impugned proceedings dated 3.1.2003 reads as if the request of the employees Union has been considered before issuing the proceedings. A copy of the proceedings of joint meeting held with the representatives of the A.P. Power Generating Employees Union held on 16.4.2001 is made available for perusal of this court by the respondents' counsel. The point raised in that meeting is tat as per the non-statutory rules there is no post of Mazdoor in any generating stations. Under Section 9-A of the Industrial Disputes Act, creation of new post designated as Mazdoor when it is not in existence is illegal and is anti-labour policy. In the minutes of meeting held on 8.5.2000 it is indicated that their demand (Union) is not agreed. It is once again requested to treat all Mazdoors as JPAs and extend pay and other allowances with effect from 12/96 in the interest of Industrial peace.

Union pointed out that on conversion of Mazdoors as JPAs, there would no additional financial commitment to APGENCO since most of the Mazdoors otherwise also reach basic pay of Rs.2,995/- by 31.12.2001 which is minimum of JPA pay scale and hence requested to convert all Mazdoors as JPAs. It is explained that the issue is with Sri Prakash Rao's Committee. However, it is agreed to examine the matter. Perhaps, in pursuance of the said statement, the proceedings dated 3.1.2003 must have been issued.

Another proceedings of the joint meeting with the representatives of the A.P. Power Generating employees Union was

submitted to the APGENCO. One of the demands is “as per the non-statutory rules there is no post of Mazdoor in any generating stations. Under Section 9-A of the I.D. Act, the creation of Mazdoor post is illegal. In the Joint meeting held on 16.4.2001 with this union, it is agreed to designate all Mazdoors as JPAs, keeping in view that there will not be any financial burden on the APGENCO. This Union requests to implement this demand immediately”, for which the following decision has been taken:

> “Union requested to convert Mazdoors as JPAs immediately without further loss of time due to the following reasons: a) Mazdoors post is not there is OSS non-Statutory Rules b) Ex-Casual Labour and Compassionate cases are considered even now as JPAs without ITI. Separate work allocation between Mazdoor and JPA is not possible in true sense and creating problems c) On becoming JPA also they would perform jobs of Mazdoors as Helpers converted JPAs were doing in erstwhile Board e) to convert those reached Rs.2995/- basic i.e. minimum of payscale of JPA as there would hardly be any financial burden on APGENCO. It is agreed to appraise the seriousness/gravity of the problem to the management for taking a suitable appropriate decision”.

Therefore, as seen from the demand of the trade unions, it is crystal clear that the demand is to designate all the Mazdoors as JPAs keeping in view the fact that there will not be any financial burden to the 1st respondent. In pursuance of the joint meetings, the 1st respondent has taken a decision to convert the post of Mazdoor as JPA provided they fulfil certain conditions. The petitioners are not aggrieved with regard to the Mazdoors who are able to write and read with below SSC. Their only grievance is that putting of minimum of 5 years of service as on 31.12.2002 as cut off date, since the Unions have never demanded to put up a cut-off date.

There is some force in the contention raised by the learned counsel for the petitioners because it is not the case of the Unions to prescribe a cut-off date. The counsel for the petitioner placed strong reliance on the decision reported in Civil Appeal No.9895 of 1996 dated 22.7.1996 by the apex court between M.C. Dhingra v. Union of India and others wherein it is held:

> "The cut off date is arbitrary violating Article 14 of the Constitution of India. Having grouped all the similar circumstanced employees, fixing the cut off date and giving benefit to those who retired thereafter is obviously arbitrary. In similar circumstances, following the ration in D.S. Nakara and others v. Union of India 1983 (1) SCC 305, this court held in the case of R.L. Marwah v. Union of India and others 1987(3) S.C.R. 928 that such a restriction is arbitrary violating Article 14. On the facts and circumstances, we find that the restriction imposed in clause 4 of the Circular is violative of Article 14. It is, therefore, unconstitutional. However, the appellant will be entitled to the pro rate pension from March, 1982".

The equality clause under Article 14 of the Constitution is of wide import. The restriction imposed by the 1st respondent in G.O.O. 614 dated 3.1.2003 can be upheld in the event that the person to whom the same principle applies forms a separate and distinct class and such a classification is reasonable one based on intelligible differentia having nexus with the object sought to be achieved. In this case the petitioners are not separate and distinct class. So, in my considered opinion all the persons placed in similar category shall be treated alike by them in privileges and liabilities. The classification should not be arbitrary but it should be reasonable. All the Mazdoors including the present petitioners are similarly placed employees. There cannot be any indiscrimination in respect of the same category of employees for consideration as JPAs. Therefore,

Sub-Clause (1) of Clause (2) of G.O.O. 614 dated 3.1.2003 sofar as the condition of putting 5 years of service that counts for increment as on 31.12.2002 A.N. as Mazdoor shall be considered for conversion as Junior Plant Attendant is violative of Article 14 and unconstitutional. The contention of the learned counsel for the respondents that the said clause was incorporated basing on the request of the employees Union cannot be accepted in the absence of any material produced by the respondents to show that the employees Union agreed for such a restriction.

The further prayer of the petitioners that the candidates failed in the earlier Job Oriented Test were being allowed to participate in the Job Oriented Test subsequently held cannot be held to be reasonable. If a candidate is failed in the Job Oriented Test, it does not mean he is not entitled to participate again in the subsequent Job Oriented Test. Therefore, the prayer for denial of allowing the Mazdoors who failed the Job Oriented Test earlier for the subsequent Job Oriented Test cannot be granted, inasmuch as the conversion as Junior Plant Attendant does not involve assumption of duties and responsibilities of greater importance than those attached to the post of Mazdoor.

To the extent indicated above, the writ petitions are partly allowed. In the circumstances, there shall be no order as to costs.

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K.C. Bhanu, J.

Date: --12—2004.

MVB.

….REGISTRAR.

//true copy//

SECTION OFFICER.

To

1 The Chairman and Managing Director, APGENCO, Vidyut Soudha , Hyderabad
2 The Execuitve Director (HR) APGENCO, Vidyut Southa , hyderabad
3 The Chief Engineer Operation & Maintenance, Mothugudem, Khamman Disrict
4 The Superintending Engineer Civil (O&M) Circle APGENCO, Upper Sileru, Visakhapatnam District

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